

OPINION
66-254

May 10, 1966 (OPINION)

Mr. Vincent A. LaQua

State's Attorney

Wells County

RE: Schools - Elections - Preparation of Absent Voters' Ballots

This is in reply to your letter of May 1, 1966, relative to the use of absent voters' ballots in school district elections.

You note that section 16-18-04 of the North Dakota Century Code, as amended, provides in part that in school elections, among others, "it shall be the duty of the clerk of the school districts * * * to prepare or have printed and available for distribution to the public at least fourteen days prior to the holding of any * * * school election, a sufficient number of absent voter ballots provided for by law for the use of all voters likely to be absent on the day of such election from the county within which such city, village, or school district is situated."

You further note the section 15-28-09 of the North Dakota Century Code, as amended, provides in part:

Any candidate for election as a member of the school board of a school district shall file with the clerk of the board, not less than ten days before the election, a statement setting forth his name and the position for which he is a candidate. At least five days before the election, the clerk shall prepare and cause to be printed, or otherwise uniformly reproduced, an official ballot containing the names of all persons who have filed as herein provided. * * *"

You call our attention to the conflict between sections 16-18-04 and 15-28-09, as amended, as to the time of preparation of ballots and also the fact the candidate is required to file not less than ten days prior to the election. You also note that the last sentence of section 15-47-06 of the North Dakota Century Code, as amended, provides that absent voters' ballots may be used in any school district election in accordance with the provisions of Chapter 16-18. You ask if it is mandatory that absent voters' ballots be prepared by each school district.

There is an obvious discrepancy in the statutes relative to the time of filing for school district office and the time for preparation of the absent voters' ballots. The conflict apparently arises out of the fact the 1965 Legislative Assembly provided for the use of absent voter ballots in school district elections, among others, and in so doing adopted many of the existing provisions relative to absent voters' ballots in state elections. See Chapter 160 of the 1965 Session Laws. The election laws are presently under consideration by

the Legislative Research Committee and presumably these conflicts will be corrected by legislation in the next session. In the meantime it will be necessary to effectuate the law in the best manner possible.

With respect to your first question, it is our opinion the clerk of the school district should prepare the absent voters' ballots at least fourteen days prior to the election in accordance with section 16-18-04, as amended. Those candidates who have not filed for office by that time will not have their names placed on the absent voters' ballot and, by not filing prior to the time for preparation of the absent voters' ballot, will be presumed to be aware of that fact. Any candidates who have filed for election prior to the preparation of the ballot should, of course, have their names placed on the ballot. The regular ballots should be prepared in accordance with section 15-28-09, as amended.

In respect to your second question, it is our opinion the provision in section 15-47-06 to the effect the absent voters' ballots may be used in school district elections refers to the fact that the voters, under proper circumstances, may use the ballot. We do not believe it leaves any discretion with the school board as to their use and thus we believe it is mandatory that absent voters' ballots be prepared in each school district election.

HELGI JOHANNESON

Attorney General